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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/552,768 | 10/12/2005 | Adolf Ramusch | AT 030017 | 2215 |

24737 7590 08/13/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

| EXAMINER | |
|---|---|
| EASTWOOD, DAVID C | |
| ART UNIT | PAPER NUMBER |
| 3731 | |
| MAIL DATE | DELIVERY MODE |
| 08/13/2009 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/552,768 | RAMUSCH ET AL. | |
| | Examiner | Art Unit | |
| | DAVID EASTWOOD | 3731 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *09 June 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 October 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Response to Amendment*

1. Receipt is acknowledged of applicant's amendment filed 6/9/2009. Claims 1-5 are pending and an action on the merits is as follows.

2. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by L.L. Magnus et al (US 2480252).

**Regarding Claim 1**, Magnus discloses a depilation device comprising a housing (1,2) and a reel (8) being supported in the depilation device so as to be rotatable about a reel axis and arranged to accommodate a tape roll formed by winding up of a depilation tape (6), wherein the reel (8) (is capable of) performing a dual function of unreeling the depilation tape (6) from the tape roll present on the reel (8) so as to apply a portion of the depilation tape (6) to the skin of a person (when rotated in one direction), and of winding up the depilation tape (6) onto the

tape roll present on the reel (8) so as to pull off a portion of the depilation tape (6) previously applied to the skin of the person (when rotated in a direction opposite of that previously described), and wherein the reel (8) is driven into rotation by drive means (1 6,17,18,19) during winding up of the depilation tape (6), and wherein the reel (8) is driven into rotation by the depilation tape (6) during unreeling of the depilation tape (6) without being hampered by the driving means (1 6,17,18,19), wherein the tape roll (roll mounted on reel 8) is the only storage device for winding up the depilation tape of the depilation device (C3 L15-18).

With regard the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over L.L. Magnus which is capable of being used as claimed if one so desires to do so. In re Casey, 152 USPQ 235 (CCPA 1967) and In re Otto, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. Kalman v. Kimberly Clark Corp., 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

**Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over L.L. Magnus et al (US 2480252) as applied to claim 1 above in view of Bosland (US 3802309).

**Regarding Clam 2**, Magnus discloses the claimed invention except for the drive means comprise an electric motor.

However Bosland discloses a tape dispenser driven by an electric motor (27) (Column 2 lines 59-64). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of L.L. Magnus with the electric motor as disclosed by Bosland. Doing so would provide a drive means for operating the reel.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over L.L. Magnus et al (US 2480252) as applied to claim 2 above in view of Bosland (US 3802309) in view of Murayama et al (US 5850979).

**Regarding Claim 3**, the invention of Magnus as modified by Bosland discloses an electric motor (27) with a motor shaft (78) (Bosland), a first gear with a toothed portion ((16) portion of reel 8 as disclosed by L.L. Magnus) and the claimed invention except for the drive means is formed by a gear transmission comprising the first gear, at least one further gear and an end gear which is in engagement with a toothed rim of the reel, and wherein the at least one further gear is adjustably supported by an adjustable carder and can be brought thereby out of engagement with the first gear so as to avoid that the unreeling of the depilation tape is hampered by the drive means.

However, Murayama discloses a drive means formed by a gear transmission comprising, at least one further gear (105) and an end gear (116) which is in engagement with a toothed rim of the reel, and wherein the at least one further gear (105) is adjustably supported by an adjustable carder (108,109) and can be brought thereby out of engagement with the first gear (C 14 L48-50) so as to avoid that the unreeling of the depilation tape is hampered by the drive means. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of Magnus as modified by Bosland with the adjustable clutch type transmission as disclosed by Murayama et al. Doing so would provide a means for disengaging the drive means from the reel.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over L.L. Magnus et al (US 2480252) as applied to claim 1 above in view of Collins (US 2929907).

**Regarding Claim 4**, Magnus discloses the claimed invention except for the depilation device is arranged to operate with a depilation tape comprising a hair removal medium that is softened by heating, wherein the depilation device comprises a heating device to which the depilation tape unreeled from the reel is supplied and wherein a portion of the depilation tape co-operating with the heating device is heated to soften the hair removal medium before the depilation tape is applied with its hair removal medium to the skin of a person, wherein the heating device comprises an adjustment means for adjusting the heating means between a rest position having no contact with the depilation tape and an operational position, having thermally conductive contact with

the depilation tape, the adjustment means being capable of positioning the heating device in the operational position during unreeling of the depilation tape from the reel and of positioning the heating device in the rest position during winding up of the depilation tape onto the reel.

However, Collins discloses a device for dispensing heat activated strips which comprises a heating device (40) with adjustment means (41) and an adjustment means (50) for moving from a rest position to a operational position when the tape is passed across the heating element (Figure 1) (Column 3 lines 70-74) (Column 4 lines 1-10 and 20-24). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of Magnus with the adjustable heating mechanism as taught by Collins. Doing so would provide a device which softens the hair removing material before application.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over L.L. Magnus et al (US 2480252) and Collins (US 2929907) as applied to claim 4 above further in view of C.E. Magnus et al (US 2423245).

**Regarding Claim 5**, the invention of L.L. Magnus as modified by Collins discloses the claimed invention except for the application roller is adjustably mounted and forms part of the adjustment means whereby the application roller is held in its adjusted position.

However, C.E. Magnus discloses an adjustable spring (32) and roll (30) which is used for application of depilation tape to the skin (figure 6) (Column 4 lines 40-50 and lines 65-71) It would have been obvious to one of ordinary skill in the art at the time of

invention to modify the invention of L.L. Magnus as modified by Collins with the adjustable head as taught by C.E. Magnus. Doing so would provide tension across the skin while the depilation tape is being applied to the skin after being fed across the heating device as taught by Collins.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID EASTWOOD whose telephone number is (571)270-7135. The examiner can normally be reached on Monday thru Friday 9 a.m. to 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID EASTWOOD/
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
8/12/09

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